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PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Leonard, et al.

Serial No.: 08/986,552

Filed : December 8, 1997

Group Art Unit: 1636

For : RECOVERY OF FETAL CELLS
FROM MATERNAL BLOOD
USING CHAOTIC ADVECTION

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PETITION TO REVIVE UNINTENTIONALLY
ABANDONED APPLICATION

OFFICE OF PETITIONS
DEPUTY A/C PATENTS

I hereby certify that this paper is being facsimile transmitted to the
Assistant Commissioner for Patents, Washington, D.C. 20231, on:

September 5, 2001
Date of Deposit

Henry Tang
Attorney Name

Henry Tang
Signature

29,705
PTO Reg. No.

September 5, 2001
Date of Signature

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Applicants hereby petition under 37 CFR § 1.137(b) and MPEP § 711.03(c) to
revive the above-identified application, which was unintentionally abandoned. At no
time did applicants intentionally abandon the above-identified application.

The application was filed on December 8, 1997 without an Oath or Declaration.

A Notice to File Missing Parts of the Application (i.e., the Oath or Declaration) was

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mailed on February 23, 1998. Owing to unexpected difficulties in obtaining the signatures of both co-inventors on an Oath or Declaration, each one having busy travel schedules, applicants' attorney did not have possession of a fully executed Declaration by August 23, 1998, the end of the 4-month extension period beyond the 2-month due date of April 23, 1998 for responding to the Notice to File Missing Parts of the Application. The delay in filing a reply to the Notice to File Missing Parts of the Application was unintentional.

Applicants' attorney sought to avert abandonment of the application by filing a Continued Prosecution Application ("CPA"), which was submitted by Express Mail on August 17, 1998. Unbeknownst to applicants' attorney at the time, the filing of the CPA was improper because the application on which the CPA was based was incomplete.

A Notice of Abandonment under 37 CFR § 1.53(f) or (g) was mailed on December 7, 1998. Because applicants' attorney was mistakenly convinced that the Notice of Abandonment was issued in error, he made numerous telephone calls to the United States Patent and Trademark Office in an attempt to have the Notice of Abandonment withdrawn for the reason that a CPA was timely filed. After months of futile attempts to reach someone at the United States Patent and Trademark Office who could explain the reason why the Notice of Abandonment was issued and why the timely filed CPA did not avert abandonment, a Petition to Withdraw Holding of Abandonment under MPEP § 711.03(c) was filed on October 18, 1999. Because applicants' attorney earnestly believed at the time that the application was not abandoned on account of the timely filing of the CPA and having received no explanation to the contrary from his

numerous telephone calls to the United States Patent and Trademark Office, he did not immediately file a Petition to Revive under 37 CFR § 1.137. At no time did applicants' attorney intentionally delay filing a Petition for Revival of an application that he believed in good faith was not abandoned.

A decision on applicants' Petition of October 18, 1999 holding that the CPA papers under 37 CFR § 1.53(d) are improper was mailed on October 23, 2000 and received by applicants' attorney's mail department on October 30, 2000. Applicants' attorney, Peter A. Businger, who handled the prosecution of the above-identified application up to that point retired from the firm of Baker Botts, L.L.P. on October 31, 2000. Given the normal mail delivery delays within the firm, it is extremely unlikely that applicants' attorney, Peter A. Businger, saw the Decision on Petition before he left the firm, and the application file was inadvertently sent to the records department of applicants' attorney's law firm and docketed as awaiting an Official Action. It is noted that the Decision on Petition does not have the words that the Petition was denied, which could have contributed to the error. A copy of the Decision on Petition is attached hereto.

It was not until a routine docket check of the application file in mid-July of this year that applicants' present attorney, Henry Tang, became aware that the application remained abandoned. Upon such discovery, applicants' present attorney, Henry Tang, used all available means to obtain expedited execution of a Declaration by the co-inventors. The fully executed Declaration of the co-inventors was received on August 20, 2001, while applicants' present attorney, Henry Tang, was on vacation. Upon his return from vacation, applicants' present attorney, Henry Tang, immediately prepared and

filed the present Petition, together with the fully executed Declaration, by facsimile. The entire delay in filing the reply to the Notice of File Missing Parts of the application until the filing of the present Petition, which is believed to be grantable, was entirely unintentional.

Authorization is hereby given to charge applicants' attorneys' Deposit Account No. 02-4377 for the required fee under 35 U.S.C. § 1.17(m). It is noted that a Verified Statement Claiming Small Entity Status has been filed in the application sought to be revived.

Favorable consideration of the present Petition is respectfully requested.

Respectfully submitted,

Dated: September 5, 2001


Henry Tang
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